

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NEW WORLD INVESTMENTS, LLC,)
Plaintiff,) Case No.: 2:17-cv-02540-GMN-VCF
vs.)
DEUTSCHE BANK NATIONAL TRUST)
COMPANY, *et al.*,)
Defendants.)
)
ORDER

Pending before the Court is the Motion to Remand, (ECF No. 5), filed by Plaintiff New World Investments, LLC (“Plaintiff”). Defendant Deutsche Bank National Trust Company (“Defendant”) filed a Response, (ECF No. 13), and Plaintiff filed a Reply, (ECF No. 15).¹ For the reasons discussed below, Plaintiff’s Motion to Remand is **GRANTED**.

1. BACKGROUND

Plaintiff filed this action in state court on August 23, 2017, seeking to quiet title to the real property located at 2366 Cardiff Lane, Unit C, Las Vegas, Nevada 90108. (Compl., Ex. A to Pet. for Removal, ECF No. 1-2). Defendant removed the action to this Court pursuant to 28 U.S.C. § 1331, citing to the Ninth Circuit’s decision in *Bourne Valley Ct. Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154 (9th Cir. 2016). (Pet. For Removal ¶¶ 3–4, ECF No. 1). Alternatively, Defendant claims in its Petition for Removal that the Court has jurisdiction pursuant to 28 U.S.C. § 1332. (*Id.* ¶ 5). In the instant Motion, Plaintiff seeks to remand this case back to state court based on the lack of subject matter jurisdiction and diversity

¹ Defendant filed a Second Response, (ECF No. 14), on October 23, 2017. Pursuant to LR 7-2(b), the deadline to file and serve a response to a motion is fourteen days after service of the motion. Here, Defendant's Second Response was filed seventeen days after the Motion to Remand was filed and is therefore untimely. Accordingly, the Court will not consider Defendant's Second Response, (ECF No. 14).

1 jurisdiction. (See Mot. to Remand 3:13–23, ECF No. 5).

2 **II. LEGAL STANDARD**

3 Federal courts are courts of limited jurisdiction, possessing only those powers granted by
4 the Constitution and by statute. *See United States v. Marks*, 530 F.3d 799, 810 (9th Cir. 2008).
5 “If at any time before final judgment it appears that the district court lacks subject matter
6 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). Removal statutes are strictly
7 construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).
8 “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first
9 instance.” *Id.* (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)).
10 In evaluating diversity jurisdiction, the defendant has the burden of overcoming the “strong
11 presumption” against removal. *Gaus*, 980 F.2d at 566.

12 Under 28 U.S.C. § 1331, a federal district court has original jurisdiction over all civil
13 actions arising under the laws of the United States. *See* 28 U.S.C. § 1331. “The presence or
14 absence of federal question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which
15 provides that federal jurisdiction exists only when a federal question is presented on the face of
16 the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392
17 (1987). “[A] case may not be removed to federal court on the basis of a federal defense.” *Id.* at
18 393.

19 Under 28 U.S.C. § 1332, a federal district court has original jurisdiction over all civil
20 actions between citizens of different states where the amount in controversy exceeds \$75,000.
21 *See* 28 U.S.C. § 1332(a)(1). Section 1332 requires complete diversity among the parties; each
22 of the plaintiffs must be a citizen of a different state than each of the defendants. *Morris v.*
23 *Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001).

1 **III. DISCUSSION**

2 **A. Federal Question**

3 Plaintiff contends that Defendant’s “reliance on *Bourne Valley* amounts to a defense to
4 Plaintiff’s claim for relief. There is no federal question on the face of the complaint. There is
5 no federal law in dispute, and allowing removal would eviscerate the balance between federal
6 and state courts.” (Mot. to Remand 6:9–13, ECF No. 5).

7 In response, Defendant argues that jurisdiction is established under the well-pleaded
8 complaint rule because “it is clear from the face of the Complaint that Plaintiff’s ‘right to relief’
9 depends on a substantial question of federal law.” (Resp. 5:8–9, ECF No. 13). Specifically,
10 Defendant argues that Plaintiff’s right to quiet title “depends on a substantial question of
11 federal law – namely, the unconstitutionality of the that [sic] statutory scheme affording notice
12 under federal due process principles – thereby conferring jurisdiction under § 1331.” (*Id.* 6:11–
13 13).

14 In the alternative, Defendant claims that three exceptions to the well-pleaded complaint
15 rule apply. First, Defendant argues that jurisdiction exists under the substantial federal question
16 exception. (*Id.* 9:16–17). Second, Defendant avers that “this case qualifies for the ‘artful
17 pleading’ exception because state and federal decisions have reached different conclusions on
18 the same major issue of federal law that is outcome determinative.” (*Id.* 6:14–16). Third,
19 Defendant asserts that “[f]ederal question jurisdiction is also present here because the
20 ‘defensive coercive action’ exception applies.” (*Id.* 12:7–8). The Court will address each of
21 Defendant’s arguments in turn.

22 ***1. Well-Pleaded Complaint Rule***

23 Under the well-pleaded complaint rule, “federal jurisdiction exists only when a federal
24 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar*,
25 482 U.S. at 392. Here, Plaintiff has not stated any federal claims. Plaintiff’s claims against

1 Defendant for quiet title and declaratory relief arise under state law. Accordingly, the Court
2 finds that Defendant has failed to establish federal question jurisdiction under the well-pleaded
3 complaint rule.

4 2. *Substantial Federal Question Exception*

5 Generally, federal question jurisdiction turns on the face of the plaintiff's well-pleaded
6 complaint. *See Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S.*
7 *California*, 463 U.S. 1, 9–10 (1983). However, there is a narrow category of state law claims
8 that “implicate significant federal issues.” *Grable & Sons Metal Prod., Inc. v. Darue Eng'g &*
9 *Mfg.*, 545 U.S. 308, 312 (2005). Under the substantial federal question doctrine, “[f]ederal
10 jurisdiction over a state law claim may lie if a federal issue is: (1) necessarily raised, (2)
11 actually disputed, (3) substantial, and (4) capable of resolution in federal court without
12 disrupting the federal-state balance approved by Congress.” *Premier One Holdings, Inc. v.*
13 *Nationstar Mortg.*, LLC, No. 2-17-cv-01133-RFB-NJK, 2018 WL 3207590, at *2 (D. Nev.
14 June 30, 2018) (citing *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308,
15 314 (2005)).

16 The second element of the *Grable* test requires that a federal issue be actually disputed.
17 At the time Defendant sought to remove the case, the Ninth Circuit had already decided *Bourne*
18 *Valley*. Thus, when Defendant filed its Petition for Removal, “a federal court had determined
19 that the nonjudicial foreclosure scheme of [Nevada Revised Statute (“NRS”)] 116 was
20 unconstitutional; therefore, there remained no disputed federal issue at the time of removal.”
21 *Premier One Holdings, Inc.*, 2018 WL 3207590 at *2 (D. Nev. June 30, 2018) (finding that “as
22 there no longer remained a disputed federal issue at the time Nationstar removed this case to
23 federal court, the *Grable* test is not satisfied, and federal question jurisdiction is improper”). In
24 light of the fact that there is no federal disputed issue, the *Grable* test has not been satisfied,
25 and the Court need not analyze the remaining elements. Accordingly, jurisdiction cannot be

1 based on the substantial federal question exception to the well-pleaded complaint rule.

2 3. *Artful Pleading Exception*

3 Under the artful pleading doctrine, “a plaintiff may not defeat removal by omitting to
4 plead necessary federal questions in a complaint.” *Franchise Tax Bd. of State of Cal. v. Constr.*
5 *Laborers Vacation Tr. for S. California*, 463 U.S. 1, 22 (1983). “The artful pleading doctrine
6 allows courts to ‘dive beyond the face of the state court complaint and find federal question
7 jurisdiction’ by ‘recharacteriz[ing] a plaintiff’s state-law claim as a federal claim.’” *Lippitt v.*
8 *Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003), as amended (Sept. 22,
9 2003) (quoting *Precision Pay Phones v. Qwest Communications Corp.*, 210 F. Supp. 2d 1106,
10 1112–13 (N.D. Cal. 2002)). Courts have used the artful pleading doctrine in complete
11 preemption cases, substantial federal question cases, and cases where the claim is necessarily
12 federal in character. *See id.* 340 F.3d at 1041 (9th Cir. 2003); *see also ARCO Envtl.*
13 *Remediation, L.L.C. v. Dep’t of Health & Envtl. Quality of Montana*, 213 F.3d 1108, 1114 (9th
14 Cir. 2000). However, the artful pleading doctrine should only be invoked in “limited
15 circumstances as it raises difficult issues of state and federal relationships and often yields
16 unsatisfactory results.” *Id.* (citation and internal quotation omitted).

17 As the Court has already found that substantial federal question does not apply in this
18 case, the Court will address Defendant’s argument that the instant matter is a preemption case.
19 Specifically, Defendant argues “that the Ninth Circuit did not agree with *SFR*’s reasoning on
20 the issue of federal due process, and intended to displace that precedent with its own,” and
21 “[b]ecause the two precedents are in conflict and the Ninth Circuit intended for its decision to
22 displace Nevada’s on an issue of federal constitutional law, quiet title actions based on NRS
23 116.3116 et seq. are completely preempted by federal law.” (Resp. 8:12–16).

24 The “complete pre-emption doctrine” describes “those cases in which federal law
25 completely preempts state law and provides a federal remedy.” *Ethridge v. Harbor House Rest.*,

1 861 F.2d 1389, 1403 (9th Cir. 1988). Complete preemption “provides that, in some instances,
2 ‘the preemptive force of [federal statutes] is so strong that they completely preempt an area of
3 state law . . . [and] any claim purportedly based on that preempted state law is considered, from
4 its inception, a federal claim, and therefore arises under federal law.’” *Wayne v. DHL*
5 *Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002) (quoting *Balcorta v. Twentieth*
6 *Century–Fox Film Corp.*, 208 F.3d 1102, 1107 (9th Cir. 2000)).

7 Here, there is no federal statute at issue; rather, there are competing interpretations of a
8 state statute as a result of the Ninth Circuit’s decision in *Bourne Valley*. Therefore, there has
9 been no preemption of state law through federal regulation or federal statute. *See ARCO*, 213
10 F.3d at 1114 (“Unlike complete preemption, preemption that stems from a conflict between
11 federal and state law is a defense to a state law cause of action and, therefore, does not confer
12 federal jurisdiction over the case.”). Thus, the Court finds that complete preemption does not
13 apply and is not persuaded by Defendant’s argument that the claims are necessarily federal in
14 character. Accordingly, the Complaint does not artfully plead a federal cause of action.

15 4. *Coercive Action Exception*

16 Additionally, the Court is not persuaded by Defendant’s argument that the coercive
17 action doctrine allows this case to remain in federal court. A narrow exception to the well-
18 pleaded complaint rule exists in the context of certain “coercive” actions for declaratory
19 judgment. *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 134 S. Ct. 843, 848 (2014).
20 However, “[d]eclaratory actions, such as a claim for quiet title, do not implicate the same
21 considerations as coercive actions.” *Alessi & Koenig LLC v. Fed. Nat'l Mortg. Ass'n*, No. 2-15-
22 cv-01946-GMN-GWF, 2017 WL 2636044, at *3 (D. Nev. June 19, 2017); *Salomon v. Fed.*
23 *Nat'l Mortg. Ass'n*, No. 2-15-cv-00332-GMN-VCF, 2017 WL 1273868, at *2 (D. Nev. Mar.
24 31, 2017).

25 Here, as in the cases cited *supra*, the face of the Complaint contains only claims based

1 on state law, and Defendant has not convincingly shown an exception to the well-pleaded
2 complaint rule. Rather, this case more closely resembles the “settled law that a case may not be
3 removed . . . on the basis of a federal defense,” than the doctrine described in *Medtronic*,
4 where a request for declaratory judgment is closely related to a viable federal coercive claim.
5 *See Thunder Properties, Inc. v. Treadway*, No. 3-15-cv-00141-MMD-VPC, 2017 WL 899961,
6 at *3 (D. Nev. Mar. 7, 2017) (rejecting the argument that the coercive action doctrine
7 establishes federal jurisdiction in a similar case). The Court therefore finds that Defendant has
8 failed to establish federal question jurisdiction in this action.

9 **B. Diversity Jurisdiction**

10 Alternatively, Defendant asserts in its Petition for Removal that the Court has diversity
11 jurisdiction. (Pet. for Removal ¶ 5, ECF No. 1). In support, Defendant alleges that its main
12 office location is in California and Defendant was organized under the laws of the United States
13 thereby making Defendant a citizen of California for diversity purposes. (*Id.*). Defendant
14 further alleges that Plaintiff is a Nevada limited liability company and therefore a citizen of
15 Nevada for diversity purposes. (*Id.*). Additionally, Defendant asserts that Staci Hall (“Hall”),
16 the former owner of the property and Nevada resident, is an improperly joined defendant to the
17 state action. (*Id.*); (*see Compl. ¶ 4, Ex. A to Pet. for Removal, ECF No. 1-2*).

18 To establish diversity jurisdiction, the removing party must demonstrate that there was
19 complete diversity among the parties at the time of removal. *See Morris*, 236 F.3d at 1067.
20 “Nevertheless, one exception to the requirement for complete diversity is where a non-diverse
21 defendant has been ‘fraudulently joined.’” *Id.* “Although there is a general presumption against
22 fraudulent joinder, if the plaintiff fails to state a cause of action against a resident defendant,
23 and the failure is obvious according to the settled rules of the state, the joinder of the resident
24 defendant is fraudulent.” *Hamilton Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1206
25 (9th Cir. 2007) (internal citation and quotation marks omitted). “In such a case, the district

1 court may ignore the presence of that defendant for purposes of establishing diversity.” *Hunter*
2 *v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th Cir. 2009).

3 The Court finds that Defendant has failed to meet its heavy burden to prove that the
4 joinder of Hall, the in-state party, was improper. *See id.* In *Weeping Hollow Ave. Tr. v.*
5 *Spencer*, 831 F.3d 1110 (9th Cir. 2016), the Ninth Circuit held that it was not fraudulent to
6 name the former homeowner as a defendant in a quiet title action because the former
7 homeowner “could still assert an interest in the property by challenging the [Home Owners
8 Association (“HOA”)] foreclosure sale on equitable grounds.” 831 F.3d at 1114. Under
9 Nevada law, a former homeowner can bring claims challenging the HOA foreclosure sale
10 within five years of the sale. NRS § 11.070; *see Shadow Wood HOA v. N.Y. Cnty. Bancorp.*,
11 366 P.3d 1105, 1107 (Nev. 2016) (holding that “in an appropriate case, a court can grant
12 equitable relief from a defective HOA lien foreclosure sale”).

13 Here, there have been two foreclosure sales since Hall owned the property. The first
14 sale that extinguished Hall’s property rights occurred on September 25, 2013. (Mot. to Remand
15 8:3–4). Because Hall as the former homeowner could potentially bring an equitable claim for
16 quiet title under state law within five years of the foreclosure sale, Hall’s ability to challenge
17 the sale existed when the state action was filed. Therefore, Plaintiff can articulate a colorable
18 claim against Hall for quiet title. Accordingly, Hall is not fraudulently joined. Furthermore, as
19 Plaintiff and Hall are both citizens of Nevada, complete diversity does not exist on these facts
20 and Defendant has failed to establish diversity jurisdiction.

21 Additionally, Defendant argues that “[i]f *Weeping Hollow* is applied to prohibit diversity
22 jurisdiction, then it should also be applied to establish that [Defendant’s] defense that the NRS
23 116.3116 is facially unconstitutional (as held in *Bourne Valley*) is an integral and inseparable
24 part of the quiet title action” and therefore establishes federal question jurisdiction. (Resp.
25 14:28–15:3). The Court finds that the Ninth Circuit’s holding in *Weeping Hollow* that there

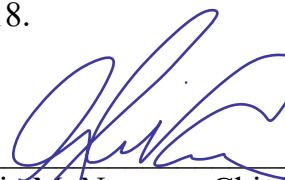
1 was no fraudulent joinder and that the homeowner's presence in the action divested the district
2 court of diversity jurisdiction requiring remand to state court does not establish federal question
3 jurisdiction in instant case. *See Weeping Hollow*, 831 F.3d at 1114. Furthermore, "a case may
4 not be removed to federal court on the basis of a federal defense." *Caterpillar*, 482 U.S. 386,
5 393 (1987). In light of the foregoing, the Court does not have jurisdiction over this case.

6 **IV. CONCLUSION**

7 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand, (ECF No. 5), is
8 **GRANTED**.

9 **IT IS FURTHER ORDERED** that this case is **REMANDED** to the Eighth Judicial
10 District Court for the State of Nevada, County of Clark.

11 **DATED** this 16 day of September, 2018.



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14 Gloria M. Navarro, Chief Judge
United States District Court
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